

A-101-L

LETTER 10-143-1

H.D. DANIELS

I Concur

ALICE ROOSE

I Concur

D. WASHINGTON

October 3, 1960

Mr. Delmer Drinen, Chairman
Arizona State Board of Dispensing Opticians
1026 East Colter Street
Phoenix, Arizona

Re: A.R.S. §32-1696.4, as
amended "Unlawful Acts".

Dear Mr. Drinen:

This is in reply to your letter of August 12 relating to the
above captioned section of the code. The Board requests an
opinion from this office on these questions:

- "1. May a Dispensing Optician enter into an
arrangement with a prescribing doctor in a
joint ownership of an optical dispensing
establishment, whether this arrangement be
in the form of a partnership, corporation
or otherwise?
2. May a Dispensing Optician enter into any
arrangement with a prescribing doctor whereby
the doctor may derive any payments arising
out of or connected with such dispensing to
their patients, whether such payment be in
the form of or regarded as a rebate, credit,
credit balance, gift, dividend, participation
in or share in profits or otherwise?"

The pertinent part of A.R.S. §32-1696.4 reads as follows:

"It is unlawful:

1. * * *

4. To give, pay or receive, or offer to give,
pay or receive, directly or indirectly, any
gift, premium, discount, rebate, or remunera-
tion to or from any physician or optometrist
in return for referral of patients or customers."

This statute is clear and unambiguous and needs no interpretation.

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ARIZONA ATTORNEY GENERAL

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Any optician who violates the provisions of this statute by giving, receiving or paying, or offering to give, receive or pay to a doctor any kind of gift, premium, discount, rebate or remuneration, directly or indirectly, for furnishing to them, patients, is in violation of this Act.

As to Question No. 1, in applying the provisions of A.R.S. §32-1696.4, supra, we must consider the facts involved in each case to decide whether there is or is not a violation. Consequently, we are unable to make a determination from this question whether in all instances, where an agreement or arrangement has been made between a prescribing doctor and a dispensing optician in the form of a partnership or corporation, is in violation of the law. When such agreement or arrangement between the two parties is submitted to this office with full disclosure of the facts for consideration and deliberation we shall then determine whether the provisions of A.R.S. §1696.4, supra have been breached.

As to Question No. 2, if there is an arrangement between a prescribing doctor and an optician whereby the doctor receives rebates, gifts, credit balances, dividends, participation or share in profit, we feel that this would be a violation of the subject statute. The optician, if guilty of this conduct, should be disciplined accordingly. It is plain that the statute requires that this kind of business activity be prohibited.

We will not discuss the application of the Medical Practice Act to the questions asked, in view of the fact that this Board is not charged with the enforcement and administration of the Medical Practice Act.

We trust this information is of service to you. If we can be of further assistance, please advise us.

Very truly yours,

WADE CHURCH
The Attorney General

H. B. DANIELS
Assistant Attorney General

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